

BOARD OF REGISTERED NURSING

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Protection of the public shall be the highest priority for the Board of Registered Nursing in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

— Business and Professions Code § 2708.1

The Board of Registered Nursing (BRN) is a consumer protection agency within the state Department of Consumer Affairs (DCA). Pursuant to the Nursing Practice Act, Business and Professions Code section 2700 *et seq.*, BRN licenses registered nurses (RNs), and certifies advanced practice nurses, which include certified nurse-midwives (CNMs), nurse practitioners (NPs), registered nurse anesthetists (CRNAs), clinical nurse specialists (CNSs), and public health nurses (PHNs). In addition to licensing and certification, BRN establishes accreditation requirements for California nursing schools and reviews nursing school criteria; receives and investigates complaints against its licensees; and takes disciplinary action as appropriate. BRN's regulations implementing the Nursing Practice Act are codified in Division 14, Title 16 of the California Code of Regulations (CCR). As of 2019, BRN licenses over 450,000 RNs and certifies approximately 100,000 advanced practice nurses.

By law, the [nine-member Board](#) consists of four public members and five licensees. The licensee members must include two direct-patient care nurses, an advanced practice nurse, a nurse administrator, and a nurse educator. Seven of the members (including all of the RN members) are appointed by the Governor and two of the public members are

appointed by the legislature. The Nursing Practice Act also requires BRN's Executive Officer to be a BRN licensee, a unique requirement among DCA boards.

At this writing, there are two public member vacancies.

MAJOR PROJECTS

BRN's Comprehensive Plan to Approve and Disapprove Continuing Education Opportunities

At the Board's November 2018 [meeting](#), BRN President Phillips reported on efforts to implement [SB 799 \(Hill\) \(Chapter 520, Statutes of 2017\)](#), which amends Business and Professions Code section 2811.5 to require the Board to deliver a report to the legislature by January 1, 2019, detailing a comprehensive plan for approving and disapproving continuing education opportunities. Pursuant to SB 799, BRN must also report to the appropriate legislative committees on its progress implementing this plan by January 1, 2020.

The [draft](#) of this Report includes the Board's strategic plan for 2018–2021, which includes increasing Registered Nurse renewal percentages; establishing a regular schedule for continuing education (CE) provider audits to take place; evaluating the quality of existing CE credits being issued; supporting staff efforts to analyze and plan the new program and provide the required reports to the legislature on time; evaluating the need for a designated CE unit within the staff organization of the Board; and exploring options for the Board to become a CE provider for information that can only be provided by BRN. The draft Report outlines in detail how the Board and its staff will start implementation of these goals in the one-year time period prior to reporting out to the legislature in 2020.

At the December 2018 [meeting](#), the Board discussed the approval of the draft of the Comprehensive Plan to Approve and Disapprove Continuing Education Opportunities. Board member Jackson made a motion to add language to the Plan, and to approve the Plan with those amendments. The Board voted to approve the motion.

Employer Reporting of Nurse Practice Act Violations in California

In January 2019, the California Research Bureau (CRB) issued its [report](#) entitled “Employer Reporting of Nurse Practice Act Violations in California.” The report was produced in accordance with [SB 799 \(Hill\) \(Chapter 520, Statutes of 2017\)](#), which required that CRB evaluate the extent to which employers voluntarily report disciplined nurses to the Board, and prepare a report on the evaluation with recommendations for consistent and reasonable reporting mechanisms. [\[23:1 CRLR 88–89\]](#) Of note, among nursing boards in the United States, including California, the standard practice is to adopt a “fire alarm” approach toward the oversight of registered nurses, as opposed to an approach where a policing body actively looks for violations. States differ in when, how, and who they require to submit a report of a violation: 36% (including California) have no mandatory reporting rules for registered nurses, meaning individuals have discretion to report a violation; 64% of states require mandatory reporting by one or more groups, including employers, fellow nurses, and/or other licensed medical professionals. The report concludes that the data shows no strong correlation between a state having or not having mandatory reporting rules and the rate of complaints per licensee. Also, the non-mandatory approach adopted for registered nurses in California is standard for other boards within DCA with a few exceptions. The report outlines many of the barriers to reporting

experienced by employers, fellow nurses and other licensed medical professionals, as well as deficiencies in BRN's data tracking that does not link the relationship of the person reporting with the nurse who is the subject of the complaint.

Regulations Updating Nurse Practitioner Standards

On January 15, 2019, the Office of Administrative Law (OAL) [approved](#) the Board's proposed regulations to amend sections 1480–1484 and adopt sections 1483.1, 1483.2, and 1486, Title 16 of CCR regarding nurse practitioner standards. The Board initially noticed its intent to amend these proposed regulations in August 2016. The Board released its [fifth modified text](#) on October 1, 2018 and submitted its final rulemaking package to OAL by December 10, 2018. [[24:1 CRLR 104–105](#)] These regulations update BRN's standards of practice for Advanced Practice Registered Nurses and became effective on January 15, 2019.

Underground Regulation Petition

At the January 10, 2019 [meeting](#), the Board met with legal counsel in closed session to discuss the underground regulation petition that the California Association of Private Postsecondary Schools filed regarding enrollment restrictions. On January 29, 2019, BRN certified to OAL that the Curriculum Revision Guidelines and Criteria & Guidelines for Self-Study had been rescinded and that BRN would not issue, use, enforce or attempt to enforce them. Pursuant to Title 1, section 280 of the California Code of Regulations, OAL [suspended](#) all action on this petition.

Meeting the Demand for Health: Final Report of the California Future Health Workforce Commission

The California Future Health Workforce Commission has been working for almost two years on solutions to the shortage of nurses and other healthcare providers in the state. The Commission's [report](#) (released in February 2019) recommends closing California's growing workforce gaps by 2030 by taking the following steps as related to nurses:

- Expand and scale pipeline programs to recruit and prepare students from underrepresented and low-income backgrounds for health careers with mentorship, academic, career, and psychosocial support;
- Support scholarships for qualified students who pursue priority health professions and serve in underserved communities under a new Emerging California Health Leaders Scholarship Program;
- Maximize the role of nurse practitioners as part of the care team to help fill gaps in primary care,...and providing them with greater practice authority, with particular emphasis in rural and urban underserved communities; and
- Develop a psychiatric nurse practitioner program that recruits from and trains providers to serve in underserved rural and urban communities to help address access gaps in behavioral health.

At the April 2019 [meeting](#), the Board heard public comment regarding the growing shortage of nurses in California and the issuance of the California Future Health Workforce Commission report on solutions to the nursing shortage.

LEGISLATION

[SB 227 \(Levva\)](#), as introduced February 7, 2019, would amend sections 1279 and 1280.3 of the Health and Safety Code, to require periodic inspections of hospitals by the Department of Public Health to include review of the hospital’s compliance with nursing staff ratios. It would also establish administrative penalties for nurse staff ratio violations of \$30,000 for first violations and \$60,000 for subsequent violations. According to the author, SB 227 will “empower DPH to enforce the legally mandated nurse-to-patient staffing ratios and therefore improve healthcare quality in California hospitals and make sure that patients receive the care they need and deserve.” At its April [meeting](#), the Board voted to support the bill. [*S. Appr*]

[AB 149 \(Cooper\)](#), as amended February 19, 2019, amends sections 11162.1 and 11164, and adds section 11162.2, of the Health and Safety Code to provide a transition period for implementing [AB 1753 \(Low\) \(Chapter 479, Statutes of 2018\)](#), requiring new security prescription forms for prescription of controlled substances. When AB 1753 went into effect, a timeline for implementation was not included, causing confusion for medical professionals and consumers.

Governor Newsom [signed](#) this bill on March 11, 2019 (Chapter 4, Statutes of 2019), stating that “AB 149 is needed to ensure patients throughout the state continue to receive their prescriptions quickly and easily, while meeting the State’s need to aggressively address the opioid crisis.” As an urgency statute, the proposed statutory changes became effective on March 11, 2019.

[AB 544 \(Brough\)](#), as amended March 21, 2019, and as it pertains to BRN, would amend section 703 of the Business and Professions Code to restrict the maximum fee for

the renewal of a nursing license in an inactive status to no more than 50% of the renewal fee for an active license. It would also amend section 2734 of the Business and Professions Code to prohibit nurses whose licenses have expired from practicing nursing. This bill would also amend section 3774 to prohibit BRN “from requiring payment of accrued and unpaid renewal fees as a condition of reinstating an expired license or registration.” [A. B&P]

[AB 1364 \(Rubio\)](#), as amended March 25, 2019, would amend section 2786 of the Business and Professions Code to exempt certain accredited and approved nursing schools or programs from BRN regulations when the schools meet certain federal accreditation thresholds. It would also exempt approved nursing schools or programs from the requirement of obtaining board approval or authorization to regulate the enrollment of students. To address the severe nursing shortage in California, the author states this bill would

improve the quality of care and advance an accessible, flexible learning continuum in healthcare-related fields in California,...[by] exempt[ing] qualifying institutions from some redundant state programmatic regulations. These redundancies regularly delay the approval process for new locations and enrollment by upwards of six to nine months, hindering the ability of students to enroll in nursing programs.

The author further states that BRN would maintain full oversight of public safety, licensing and discipline. After hearing substantial public comment at its April [meeting](#), the Board voted to oppose this bill. [A. B&P]

[AB 241 \(Kamlager-Dove\)](#), as amended April 4, 2019, and as it relates to BRN, would amend sections 2190.1 and 3524.5 of the Business and Professions Code, to require nurses to complete continuing education courses related to implicit bias. The bill would also add section 2736.5 to the Business and Professions Code to require BRN to implement

the changes in regulation by January 1, 2022. According to the author, AB 241 would reduce disparities in health care by requiring licensees under the Medical Board, Physician Assistant Board and Board of Registered Nursing to undergo implicit bias training and testing as part of their already mandated continuing medical education requirements. At its April [meeting](#), the Board voted to oppose this bill and stated at the time of the hearing before the Assembly Business and Professions committee that “the Board supports the understanding of implicit bias and the promotion of bias-reducing strategies,...[but] the bill’s requirements on its over 450,000 licensees ‘would create a tremendous workload for the Board to evaluate and require 3,000+ Continuing Education Providers (CEPs) to embed the implicit bias into every course offered to California nurses.’” *[A. B&P]*

[AB 1622 \(Carrillo\)](#), as amended April 4, 2019, and as it pertains to BRN, would amend section 2746.2 of the Business and Professions Code to require BRN to include family physicians on the nurse-midwifery education committee. Existing law allows “BRN to appoint a committee of qualified physicians and nurses...to develop the necessary standards relating to education requirements, ratios of nurse-midwives to supervising physicians, and associated matters.” At its April [meeting](#), the Board voted to oppose the bill noting that the committee already has a physician (OB/GYN) serving on the board. *[A. Appr]*

[AB 329 \(Rodriguez\)](#), as amended April 8, 2019, would add section 1318.5 to the Health and Safety Code to require hospitals and health care facilities to post the following notice:

“WE WILL NOT TOLERATE any form of threatening or aggressive behavior toward our staff, patients, or visitors. Assaults and batteries against our staff, patients, or visitors are crimes and may result in a criminal

conviction. All staff have the right to carry out their work without fearing for their safety.”

The author notes that front-line nurses report the highest rates of workplace assault. To address these issues, AB 329 makes an assault or battery committed against a physician, nurse, or other healthcare worker of a hospital engaged in providing services within the emergency department punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding \$2,000, or by both that fine and imprisonment. At its April [meeting](#), the Board voted to watch this bill. [*A. PubSafe*]

[AB 890 \(Wood\)](#), as amended April 3, 2019, would amend sections 650.01 and 805 of the Business and Professions Code, to authorize a nationally certified nurse practitioner (NP) to provide specified medical services without physician supervision under certain conditions. The bill would also add sections 2837.1 and 2837.2 to create a new Advanced Practice Nursing Board to regulate this new practice structure. The bill’s author noted the need for more qualified, trained NPs as a way to address shortages of primary care physicians and access to care disparities across the State of California. At its April [meeting](#), the Board voted to oppose this bill unless amended. [*A. B&P*]

LITIGATION

Moustafa v. Board of Registered Nursing, Case No. A150266 (Cal. Ct. App. 1st Dist.). Radwa Mohamed Moustafa’s application for licensure to be a registered nurse disclosed that she had been convicted of four misdemeanors that were later dismissed under the Penal Code. BRN approved a probationary license based on three convictions (petty theft and vandalism) and the underlying conduct that gave rise to them. Moustafa challenged the restriction on her license and filed a lawsuit in Superior Court. *Moustafa v.*

Board of Registered Nursing, [29 Cal. App. 5th 1119, 1124 \(2018\)](#). The lower court found in Moustafa’s favor and granted the administrative petition, relying on Business and Professions Code section 480(c), which says that a licensing board may not deny a license solely on the basis of a conviction that has been dismissed. *Id.* at 1125. The Board appealed.

Although the appellate court rejected many of the Board’s arguments, it agreed that prior to July 1, 2020, when legislation amending section 480 takes effect, the Board may deny or restrict a license based on the conduct underlying a dismissed conviction, but only when the conduct independently qualifies as a basis for denying a license. The appellate court held that contrary to the Board’s position, conduct qualifies only if it substantially relates to the applicant’s fitness to practice nursing. Applying this standard, the appellate court concluded that the Board could restrict Moustafa’s license based on the conduct underlying the petty thefts. *Id.* at 1140–41.

As of July 1, 2020 (and not changed or impacted by this appellate decision), section 480 will be amended to provide that an applicant *cannot* be denied a license “on the basis of any conviction, or on the basis of the acts underlying the conviction,” if the conviction has been dismissed. [*see* RECENT MEETINGS, *relating to AB 2138 (Chiu) (Chapter 995, Statutes of 2018)*]

State of California, by and through Attorney General Xavier Becerra v. Alex Azar, et al., Case No. 19-cv-01184-EDL (N.D. Cal.). At the March 2019 [meeting](#), the Board met in closed session with legal counsel regarding *State of California, by and through Attorney General Xavier Becerra v. Alex Azar, et al.* As it applies directly to nurses, in the lawsuit Attorney General Becerra [claims](#) that the U.S. Department of Health and Human Services and its Secretary, Alex Azar, prevent Title X (the federally funded

program devoted to family planning) health care providers, such as nurses, from providing information regarding abortion providers or referrals in its new program integrity requirements. *Id.* at 2. Among other arguments, Attorney General Becerra claims that the rule’s limitation of discussion of abortion options to only doctors and nurses with advanced degrees is detrimental to patients, since nurses discuss options with patients more often than doctors and advanced practice nurses. *Id.* at 27. This case has not proceeded to trial.

RECENT MEETINGS

At its April 2019 [meeting](#), Board President, Trande Phillips, discussed [possible action](#) regarding a regulatory proposal for BRN to conform to new legal requirements set forth in [AB 2138 \(Chiu\) \(Chapter 995, Statutes of 2018\)](#). According to the author of AB 2138, the new law reduces barriers to licensure for individuals with prior criminal convictions by limiting a licensing board’s discretion to deny a new license application when an applicant was formally convicted of certain crimes, or, was subjected to formal discipline by a licensing board. Generally, offenses older than seven years are no longer eligible for license denial. The Board made the recommendation to modify California Code of Regulations, Article 2, section 1410, and Article 4, sections 1444, 1444.5, and 1445, Title 16 of the CCR, as proposed, pursuant to the requirements of AB 2138.

Also at its April 2019 [meeting](#), Phillips discussed [possible action](#) regarding a regulatory proposal to modify California Code of Regulations, Article 3, sections 1423.1, 1427, and 1432, Title 16 of the CCR, which “set[s] forth the Board’s regulations for prelicensure nursing schools.” Last revised in 2010, the proposed regulations address various issues such as detailed basis for imposing disciplinary action against a prelicensure nursing school and formalizing data elements the Board should consider in approving

facility usage. The Board made the recommendation to adopt proposed regulatory language to address these changes and start the formal rulemaking process.